

Message Text

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ACTION NEA-10

INFO OCT-01 ISO-00 SSO-00 TRSE-00 AID-05 OPIC-03 NSCE-00

INRE-00 USIE-00 CCO-00 CIAE-00 OTPE-00 EB-07 FCC-01

INR-07 NSAE-00 OC-05 COME-00 BIB-01 PM-03 NSC-05

SP-02 SS-15 L-03 H-02 (ISO) W
----- 086084

O R 181345Z JUN 75

FM AMEMBASSY NEW DELHI

TO SECSTATE WASHDC IMMEDIATE 9296

SECDEF WASHDC

C O N F I D E N T I A L NEW DELHI 8036

SECDEF FOR DSAA/MCCARTHY & COL LAWRENCE

E.O. 11652: GDS

TAGS: MASS, IN, US

SUBJ: PEACE INDIGO? - REL-REEVES

REF: STATE 137988

1. REL-REEVES (RR) CHAIRMAN FREDERICK PRO IS
IN NEW DELHI ATTEMPTING TO PERSUADE THE GOI TO WITHDRAW
THE CLAIM FOR PAYMENT OF GUARANTEE ON THE PEACE INDIGO
LETTER OF CREDIT WHICH WAS PRESENTED TO FIRST NATIONAL
CITY BANK LAST WEEK. HE HOPES, THROUGH A PRESENTATION
BEING GIVEN TO THE GOI TODAY, JUNE 18, TO CONVINCE
THE MINISTRY OF DEFENSE THAT RR CAN AND WILL DELIVER THE
REMAINDER OF THE STATIC TROPOSCATTER PROJECT EQUIPMENT
BY DECEMBER 31, 1975. PRO ATTRIBUTES RR'S FAILURE TO MEET
DELIVERY DEADLINE TO NUMEROUS EQUIPMENT DESIGN CHANGES
REQUESTED BY THE GOI.

2. ACCORDING TO PRO, THE GOI WAS REQUIRED BY ITS
CONTRACT WITH RR TO GIVE 90 DAYS NOTICE IN WRITING
BEFORE CLAIMING PAYMENT OF THE GUARANTEE (IN EFFECT A
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REIMBURSEMENT OF THE GOI \$2.3 MILLION DOWN PAYMENT TO RR).

HE SAID NO NOTICE HAD BEEN GIVEN. RR'S LOCAL ATTORNEY, J.B. DADACHANJI, AGREES THAT THE GOI ACTION VIOLATES THE CONTRACT. UNFORTUNATELY, THE 90-DAY NOTICE CLAUSE WAS NOT INCORPORATED IN THE LETTER OF CREDIT OPENED BY FNCB. THE LETTER OF CREDIT REQUIRES PAYMENT UPON CERTIFICATION BY GOI THAT PAYMENT SHOULD BE MADE. THE LOCAL FNCB MANAGER BELIEVES THAT HE CANNOT JUSTIFY A FURTHER DELAY IN HONORING THE GOI CLAIM AND HE PLANS TO MAKE PAYMENT OF \$2.3 MILLION BY DOLLAR CHECK ON JUNE 18. FNCB HAD ORIGINALLY PLANNED TO MAKE PAYMENT JUNE 30 BUT THE GOI (JOINT SECRETARY OF DEFENSE ANANDAKRISHNA) TOOK A VERY HARD LINE IN A LETTER TO THE BANK DATED JUNE 17, STATING THAT IF PAYMENT WAS NOT MADE IMMEDIATELY, THE BANK WOULD BE HELD LIABLE FOR INTEREST, EXCHANGE LOSS AND DAMAGES UNQUOTE. FNCB DELHI MANAGER HAS EXPRESSED CONCERN TO THE EMBASSY REGARDING POSSIBLE RESERVE BANK ACTION AGAINST FNCB IF IT DOES NOT PROMPTLY PAY LETTER OF CREDIT.

3. IT IS HIGHLY UNLIKELY THAT RR COULD OBTAIN INJUNCTION IN TIME TO STOP PAYMENT. PRO'S ONLY HOPE, THEREFORE, IS A LAST MINUTE CHANGE OF HEART ON PART OF GOI. WE CONTINUE TO BELIEVE THAT THIS IS HIGHLY UNLIKELY.

4. WHEN PRO CAME TO DELHI, BEFORE HE INITIATED ANY DISCUSSIONS WITH THE GOI, HE ASKED ON JUNE 16 FOR EMBASSY ASSISTANCE AS FOLLOWS:

- A) TO SIT IN ON DISCUSSIONS RR HAD WITH THE GOI;
- B) TO SUPPORT RR'S ALLEGATION THAT THE GOI ACTION IN SEEKING PAYMENT OF THE GUARANTEE WAS ILLEGAL;
- C) TO VOUCH FOR THE FACT THAT RR HAD THE CAPACITY TO MEET ITS LATEST DELIVERY COMMITMENT. PRO CLAIMED GOI WOULD NOT REVERSE DECISION IF EMBASSY DID NOT SUPPORT RR.

5. WE TOLD PRO THAT THE EMBASSY COULD NOT VOUCH FOR ANY DELIVERY COMMITMENTS MADE BY RR AS WE COULD NOT DO THIS FOR ANY PRIVATE US COMPANY. (RR HAS ALREADY SOUGHT FOUR EXTENSIONS OF DELIVERY DATES.) WE TACTFULLY DECLINED TO SIT IN ON RR'S PRESENTATION TO THE GOI AS WE BELIEVED THAT AT THIS STAGE IT WAS BEST THAT RR CARRY ITS OWN PRESENTATION.

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AS FOR THE ALLEGATION THAT GOI WAS ACTING ILLEGALLY, RR'S ATTORNEY HAS TOLD US THAT HE HAS PERSUADED PRO THAT THIS LINE WOULD ANGER GOI AND COULD DO MORE HARM THAN GOOD TO RR'S CASE.

6. WE INFORMED PRO THAT EMBASSY INTERVENTION WAS NORMALLY BETTER USED AS A LAST RESORT AFTER LEGAL REMEDIES HAD BEEN SOUGHT AND IT WAS DEMONSTRATED THAT A US FIRM

WAS BEING DISCRIMINATED AGAINST UNDER INDIAN LAW. WE
HAVE NOT HEARD FROM PRO SINCE HIS INITIAL TALK WITH THE EMBASSY.

7 RR'S SECOND CONTRACT WITH THE GOI (MOBILE
TROPOSCATTER EQUIPMENT) IS ALSO IN JEOPARDY, ACCORDING
TO THE FNCB. IF RR FAILS TO MAKE A MAJOR SHIPMENT DUE
IN OCTOBER UNDER THAT CONTRACT, THE GOI WOULD INVOKE
THE 90-DAY CLAUSE AND RECOVER ITS \$1.6 MILLION DOWN
PAYMENT WHICH IS ALSO COVERED BY A BANK GUARANTEE.
SCHNEIDER

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